RECENT DECISIONS

ALIMONY—REFUSAL TO PAY—CONTEMPT.—The plaintiff obtained a rule against the defendant to show cause why he should not be punished for contempt for refusing to pay alimony. The defendant had no property but was an able-bodied man and, if he had tried, could have easily earned money enough to pay the alimony awarded against him. *Held,* the defendant is guilty of contempt. *Fowler* v. *Fowler* (Okl.), 161 Pac. 227. See NOTES, p. 401.

ASSAULT—WHAT CONSTITUTES—CONDITIONAL OFFER OF VIOLENCE.—The defendant, with his walking cane on his arm and in a violent and abusive manner, presented a paper to the plaintiff and demanded that the plaintiff sign it, threatening to beat him if his demand was not complied with. The plaintiff signed to escape injury. *Held,* such acts constitute an assault. *Trogden* v. *Terry* (N. C.), 90 S. E. 583.

An assault is an attempt, with unlawful force, to inflict bodily injury upon another, accompanied with the present ability to give effect to the attempt if not prevented. COOLEY, TORTS, 149. The injury attempted must be corporal injury. *Patterson* v. *Pillans,* 43 App. Cas. D. C. 505. For this reason, mere words, however abusive, do not constitute an assault. *Kramer* v. *Ricksmeier,* 159 Iowa 48, 139 N. W. 1091, 45 L. R. A. (N. S.) 928; *Hixson* v. *Slocum,* 156 Ky. 487, 161 S. W. 522, 51 L. R. A. (N. S.) 838. See *Prince* v *Ridge,* 32 Misc. Rep. 666, 66 N. Y. Supp. 454. But where abusive words are accompanied by a threat of immediate violence, the latter constitutes an assault, without regard to the words. *Bishop* v. *Ranney,* 59 Vt. 316, 7 Atl. 820. The force threatened must be unlawful, else there is no liability. See *Chase* v. *Watson,* 75 Vt. 385, 56 Atl. 10; *Carter* v. *Sutherland,* 52 Mich. 547, 18 N. W. 375. But if the force offered is excessive, though lawful, the defendant is liable. See *Chase* v. *Watson, supra; Carter* v. *Sutherland, supra.* An offer of lawful force does not justify the one first assailed in returning the assault. *Saunders* v. *Gilbert,* 156 N. C. 463, 72 S. E. 610, 38 L. R. A. (N. S.) 404; *Drew* v. *Comstock,* 57 Mich. 176, 23 N. W. 721.

For civil liability, it is not necessary that the assailant actually intend to inflict the threatened injury; it is sufficient if he has the apparent intent to do so. *McGlone* v. *Hauger,* 56 Ind. App. 243, 104 N. E. 116; *Howell* v. *Winters,* 58 Wash. 436, 108 Pac. 1077. But see *Degenhardt* v. *Heller,* 93 Wis. 662, 68 N. W. 411, 57 Am. St. Rep. 945. If, however, the threat is accompanied by words which clearly show the absence of any intent to do harm, it is not an assault. *Tuberville* v. *Savage,* 1 Mod. 3. It is not necessary that the assailant have actual ability to execute the threat, the test being whether the person assailed had reasonable belief that the ability was present. *Beach* v. *Hancock,* 27 N. H. 223, 59 Am. Dec. 373. See *Kline* v. *Kline,* 158 Ind. 602, 64 N. E. 9, 58 L. R. A. 397. For this reason, the pointing of an unloaded firearm at another, not known to the other to be unloaded, is an assault. *Beach* v. *Hancock, supra.*